

DELTA PROTECTION COMMISSION

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To: Delta Protection Commission
From: Margit Aramburu, Executive Director
Subject: Summary of Comments Submitted on Revised Draft Plan

INTRODUCTION:

1. p.1&2, Text: Clarify that some recommendations do apply to local governments. (SJ)
2. p. 1, Text: Add to the end of paragraph four: "Also pursuant to the Act, to the extent that any of the requirements specified in the Land Use and Resource Management Plan are in conflict, nothing in this plan shall deny the right of the landowner to continue the agricultural use of the land." (Farm)
3. p.2, Text: Add to the last paragraph just before the last sentence: "It is important to note, however, that in the implementation of both the policies and recommendations of this plan, the Act specifically prohibits the exercise of the power of eminent domain unless requested by the landowner." (Farm)

ENVIRONMENT:

4. p. 8, P-1: Modify to read "The priority land use of areas of prime soil shall be agriculture. If commercial agriculture is no longer feasible due to subsidence or lack of adequate water supply or water quality, land uses which protect other beneficial uses of Delta resources, and which would not adversely affect agriculture on surrounding lands, or viability or cost of levee maintenance, may be permitted. If taken out of agricultural production, the land shall remain reinstatable to agriculture production for the future. (SJ)
5. p. 8, P-2: Local government has no control over agricultural and land management; retain "should", rather than change to "shall". (SJ)
6. P. 8, P-3: Local government may not have control over "lands managed primarily for wildlife habitat"; retain "should", rather than change to "shall". Modify second sentence to read "Delta-wide habitat shall be addressed in development of any wildlife habitat plan in the Delta." (SJ)
7. General The Environmental element fails to establish the habitat or traits of...the beaver, the muskrat, or other burrowing animals. Yet these burrows are clearly established as a possible (probable?) source of past levee failures. (WSac)

LAND USE:

8. p. 16, Text: Object strongly to new language added in paragraph four of the introduction. (Farm)
9. p. 16, Text: Clarify if "Delta" means legal Delta or Primary Zone. Identify cities with portions of city limits in Primary Zone. (SJ)
10. p. 21, P-4: Line 3, Retain the word "adjacent". (Wilson)
11. p. 22, P-8: Habitat mitigation banks may not include agriculture. This language is too broad... (SJ)
12. p. 22, P-9: Add new policy to read: "The implementation of the policies and recommendations contained in this plan shall not be achieved through the exercise of the power of eminent domain unless requested by the landowner." (Farm)
13. p. 22, R-2: Recommend deletion of R-2; the resource management plan will not be furthered or enhanced in any way by encouraging the State to finance any escalation in the adversarial relationship between the State Lands Commission and the Delta landowners...this recommendation relative to the State Lands Commission is inconsistent with the statutory provisions contained in Sections 29714, 29760(b), and 29760(e). (Farm)
14. p. 22, R-3: Add to the end of the recommendation "Public agencies shall provide funds to replace lost tax base when land is removed from private ownership." (Wilson)

AGRICULTURE:

15. p. 25, F-11: Modify to read "However, many of the existing programs do not reflect the unique Delta resources and opportunities." (Farm)
16. p. 26, P-1: [M]ore accurately reflect the purpose of the regional plan...strike "California" and insert "the Delta" (Farm)
17. p. 26, P-2: Modify to read "Local governments shall identify and protect the unique qualities of the Delta which make it well suited for agriculture." (Farm)
18. p. 26, P-2: The unique qualities of the Delta which make it well suited for agriculture shall be protected. (SJ)
19. p. 26, P-4: [S]tronger statement with a more appropriate rationale...suggest the following change: "Local governments shall support long-term viability of commercial agriculture in...the Delta...because of its economic and environmental importance to the State and local communities." (Farm)
20. p. 26, P-5: Reword to encourage improving the economic viability of Delta agriculture by implementing the latest strategies to minimize costly production inputs. For example, this policy might read: "Support should be given to current and alternative programs that help to minimize the need for costly production inputs such as fertilizers, pesticides, and herbicides as long as crop production levels and agricultural income can be maintained. Improving crop production and agricultural income is vital to the success of Delta agriculture." While the second sentence may seem more like a finding than a policy...the statement is crucial to understanding the overall objective of this agricultural policy. (Farm)
21. p. 27, P-7: [B]e more specific relative to the agricultural nature of the conservation easements...After all, this is the agricultural section of the plan..."Encourage acquisition of agricultural conservation easements as mitigation for projects within each county, or through public or private

funds obtained to protect agricultural...and open space values, and habitat value that is associated with agricultural operations. Encourage transfer of development rights within land holdings, from parcel to parcel within the Delta, and, where appropriate, to sites outside the Delta. Promote use of environmental mitigation in agricultural areas only when it is consistent and compatible with ongoing agricultural operations and when developed in appropriate locations designated on a county-wide or Delta-wide habitat management plan." We believe the suggested changes in the last sentence...are especially important because this policy should be consistent with both the Environmental Policy P-1 and Land Use Recommendation R-3. (Farm)

22. p. 27, P-9: [N]eeds further clarification relative to minimum parcel sizes...recommend a third sentence...as follows: "This policy shall not be construed to require the re-zoning of subminimum parcels." (Farm)
23. p. 28, P-10: Leave in place the paragraph now designated for deletion. (Wilson)

WATER:

- 24. p. 30, F-2: Define term "State's developed water".
(Wilson)
- 25. p. 30, F-5: Indicate amount or percentage of water
available for "other" uses. (Wilson)
- 26. p. 31, F-18: Delete "may". (Wilson)
- 27. p. 32, R-1: Confirm or clarify that "a primary" is used
loosely and that there is not an expectation
that the Delta water transportation system
must remain "first or highest in importance"
as "primary" is defined by Random House...it
is certainly possible that other forums may
recommend its role be diminished. Deletion
of the word "primary" would eliminate such
possible future inconsistencies. (BDOC)
- 28. General The Water element does not clearly discuss or
differentiate the impacts of the water
quality issues. The environmental analysis
is equally silent on these issues. Without
the in-depth explanation of the quantitative
effects that each of these issues presents,
the Commission will not be able to make an
informed decision on the policies. Such an
analysis should include the current water
quality in various drainages, the change to
water quality if treated waste is added, and
the change to salinity control if treated
wastewater is diverted from the Delta. (WSac)

RECREATION AND ACCESS:

- 29. P. 39, P-3: The policy should specify that the siting criteria are for recreation projects. (SJ)
- 30. p. 41, R-5: Supports study of banning night fishing in the Delta. (Wilson)

LEVEES:

31. p. 42, Text: Modify to read: "There are also other impacts associated with levee failures in the Delta...including, but not limited to, severe alteration of the aquatic habitat that should also be recognized and noted." (Farm)
32. p. 44, Goal: Stress need for coordinated permit reviews. (Wilson)
33. p. 47, P-1: In the newly added second sentence of P-1... strongly recommend that this policy statement be a mandate not a recommendation. Specifically, we believe this statement should read: "Delta levee maintenance and rehabilitation...shall be given priority over other uses of the levee areas." (Farm)
34. p. 47, P-2: Local governments should not be required to adopt specific guidelines, which may not be appropriate. (SJ)
35. p. 49, R-10: Retain recommendation about study of turbidity. (Wilson)
36. p. 49, R-12: See comment on P-2. (SJ)
37. General: [T]he Levee element is inadequate in its description of the flood characteristics of the Delta...the section fails to convey to a reader unfamiliar with the Delta the true variation of flow and water level between the flood flow and low water conditions...This may be remedied by either citing the conditions of the February 1986 storm or the modeled differences between the 100 year flood and the ordinary low water conditions. (WSac)

MARINE PATROL:

38. p. 55, P-6: Local government may not have the funds to provide adequate levels of marine patrol, even with the funding sources suggested in P-11. This policy should contain qualification "if adequate funding is available." (SJ)
39. p. 56, P-7: Identification of problems and solutions to environmental pollution extends beyond local government and should be the responsibility of a state agency. (SJ)
40. General The Marine Patrol element identifies City of West Sacramento's policy patrol boat. This element then goes on to mandate ("shall") programs, equipment, meetings, and procedures which local governments must implement. In clearly identifying the West Sacramento capability and changing the policy working from "County" to "Local Government" the Commission staff appears to require West Sacramento participation. The mandatory wording "shall" as it relates to new requirements thus becomes a mandated cost. This wording is inconsistent with the DPC legislation in that patrol costs cannot be assigned to service charges, fees, or assessments. The DPC must either pay any jurisdiction for its costs to meet this mandate, make the policies voluntary ("should"), or seek a revised statute to reimburse these costs. (WSac)

IMPLEMENTATION:

41. General:

The Implementation element of the Plan is inadequate from both a legislative standpoint and a descriptive standpoint. Legislatively, no reimbursements are required since local governments may levy service charges, fees, or assessments to cover costs. However, there is no nexus under AB 1600 to cover the staff costs to review the Plan and then amend a General Plan to obtain compliance. The Commission needs to clearly state in this element what sources of funds they expect local jurisdictions to use to recoup these costs. The descriptive inadequacy is that the Plan does not include the legislative definition of the Primary Map, the accompanying map is not sufficient to detail the boundaries, and the Commission staff is unsure of the impacted jurisdictions...If the Commission staff and the City staff are unable to establish jurisdiction then a dispute exists as to the enforcement ability of the Plan. Short of legal or legislative action, the Commission should establish which local agencies are located within the Primary Zone subject to the mandates of the Plan. Where there is confusion as to the boundary, the Plan should state the uncertainty and establish by policy whether a portion of a local agency is or is not within the Primary Zone. This positive action would enable dialogue and discover based on facts rather than uncertainty. For West Sacramento, the Plan should state that south of the Deep Water Ship Channel, the Primary Zone is coterminous with the City's western city limit. (WSac)

OTHER:

42. Reservoirs: ...the...Act...indicates that water reservoirs and habitat development that are consistent with other uses in the Delta will be permitted by the Resource Management Plan. There is no mention in your draft land use plan to indicate this element of the act. (Winther)
43. General: ...return the Plan to Staff before the Commission takes formal action on the Plan...the information provided to West Sacramento has internal inconsistencies, environmental impacts which are significant, inadequate information to make findings of fact, ambiguity as to jurisdictional enforcement, and imposes mandated costs contrary to the State law creating the Commission. (WSac)

UTILITIES AND INFRASTRUCTURE:

44. p. 10, Text: Add "Ironhouse Sanitary District purchased most of Jersey Island in April of 1993, planning to use treated wastewater and biosolids from Ironhouse wastewater treatment facilities outside the primary zone (south of Dutch Slough and the Big Break) to irrigate, fertilize and condition Jersey Island pasture lands and crops. This was prior to the Commission's first consideration of any policy concerning wastewater and biosolids in the primary zone.(Henn)
45. p. 12, P-1: Local government is preempted from regulating utility lines; move to recommendation section.(SJ)
46. p. 12, P-2: Recommends deletion of first sentence. Delete "Other" from next sentence.(SJ)
47. p. 13, P-3: Delete existing language, add: "New sewage treatment facilities (including storage ponds) and areas for disposal of sewage effluent and sewage sludge serving uses outside the Delta Primary Zone shall not be located within the Delta Primary Zone. (NOTE: The Rio Vista project as described in the adopted Final Environmental Impacts Report for such project and the Ironhouse Sanitary District use of Jersey Island for disposal of treated wastewater and Biosolids are exempt from this policy.)"(McCarty)
48. Delete existing language, add: "New sewage treatment facilities (including storage ponds) and areas for disposal of sewage effluent and sewage sludge serving uses outside the Delta Primary Zone shall not be located within the Delta Primary Zone." This should also grandfather in the facilities of Rio Vista and the Ironhouse Sanitary District on Jersey Island.(Salmon)

49. This policy appears to foreclose the use of wastewater on agricultural lands and adjacent properties for habitat enhancement, a potential option being investigated by the BDOC's technical advisory committees... perhaps taking on the words "for the purposes of wastewater treatment or disposal"...could both address DPC's concerns and provide more flexibility for creating seasonal wetland habitat and storing or treating Delta agricultural drainage before it is discharged into Delta channels. Another suggestion is to insert the word "municipal" between "treated" and "wastewater"... (BDOC)
50. "...banning the use of recycled water and biosolids (from) outside the primary zone from being used in the primary zone...would certainly be arbitrary and capricious. It would needlessly prevent the Delta Primary Zone from receiving the benefit of the use of these natural resources, and add greatly to the cost of resources management ...the Commission should be acting to enlighten the public on the benefits of using recycled and biosolids as a resources, rather than to continue to attach a stigma to such use." (Stock)
51. "It is the opinion of Tri-TAC that the proposed ban (on importing biosolids and recycled water in to the primary zone of the Delta) is unnecessary to protect public health and the environment, is not needed to achieve the objectives of the Delta Protection Act, and is not consistent with the authority of the Delta Protection Act. Furthermore the proposed ban is counterproductive to statewide recycling efforts and could have far reaching impacts." (Tri)

52. (Delta Diablo Sanitation District) Board requests the Commission not move forward with establishing Policy P-3 at this time...this could establish a very dangerous precedent for the perception of the use of biosolids and reclaimed water throughout the State of California..It appears from our evaluation that State law now adequately regulates the issues of disposal of biosolids and reclaimed water on any land in the State of California...seek additional information and scientific and legal input regarding the appropriateness of utilization of primary or secondary lands for these types of uses.(DDS)
53. Delete the last sentence; add "The application of biosolids as approved by the Water Quality Control Board and United States Environmental Protection Agency (EPA) appropriate at agronomic rates is encouraged to support agriculture in the Delta"(BIO)
54. [R]egulations [should be]...based upon facts, not upon emotional hype or the hidden agendas of special interest groups...Biosolids recycling in agriculture has been scientifically proved...to be environmentally safe.(Mercer)
55. Policy should allow for expansion of existing treatment facilities in the Primary Zone. Problem with wording with last portion of the last sentence.(SJ)
56. The Delta Protection Commission should not adopt a ban on the use of recycled water generated outside the Primary Zone in the Primary Zone, and should work to accomplish its mission and to protect soils and water quality through application of existing federal and state laws and regulations.
(Water)

57. Policy P-3 is inconsistent with Land Use Policy P-8 by restricting the type of mitigation measures without any regard to the resultant usage. P-3 has no environmental basis or supporting documentation. P-3 is inconsistent with environmental analysis. Either revise policy or add in-depth analysis to the environmental analysis. P-3 exempts Rio Vista and Ironhouse projects; the Act exempts facilities for Stockton, Lodi and unincorporated communities; this divergence needs to be explained. (WSac)
58. [S]upport the exclusion of sewage sludge and wastewater from the Delta Primary Zone and would advise further that sewage sludge or wastewater not be used on any food crops or lands intended to produce food crops. (DePaoli)
59. Modify exemption language for Ironhouse Sanitary District's project on Jersey Island to allow relocation of the agricultural practices to portions of the island not addressed in the FEIR; modify the note to read: "Note: The Ironhouse Sanitary District use of Jersey Island for disposal of treated wastewater and biosolids and the Rio Vista project as described in the adopted Final Environmental Impact Report for such project are exempt from this policy." (Henn)

List of Commentors:

BDOC: John Amodio, Executive Officer, Bay-Delta Oversight Council
BIO: Linda Novick, Technical Services Coordinator, Wheelabrator Clean Water Systems Inc., BIO GRO Division
DePaoli: William P DePaoli, Manager, California Asparagus Commission
DDS: Paul H. Causey, General Manager/District Engineer, Delta Diablo Sanitation District
Farm: John R. Gamper, Director, Taxation and Land Use, California Farm Bureau Federation
Henn: Bob Henn, Henn, Etzel & Weiss for Ironhouse Sanitary District
McCarty: Commissioner Patrick McCarty
Mercer: Danny Mercer, Consulting Environmental Chemist
Salmon: Commissioner William W. Salmon
SJ: Peggy Keranen, Deputy Director, San Joaquin County Community Development Department
Stock: Morris L. Allen, Director of Municipal Utilities, City of Stockton
Tri: Robert Baker, Chair, Tri-TAC
Water: James M. Kelly, Past President, WaterReuse Association of California
Wilson: Tim Wilson
Winther: John L. Winther, Delta Wetlands
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